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Office of the Attorney General
State of Texas

March 27, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Elaine H. Piper
Assistant City Attorney
Police Legal Advisor
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

OR92-124

Dear Ms. Piper:

The City of El Paso seeks a reconsideration of Open Records Letter No. 92-57 (1992), in which we ruled that the names of certain "non-arrested suspects" were subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request for reconsideration was assigned ID# 15017.

You contend that our rulings in Open Records Letter No. 91-447 (1991) and Open Records Letter No. 92-57 (1992), regarding the availability of the names of "non-arrested suspects" in inactive investigations under section 3(a)(8), conflict. We addressed the availability of such information in Open Records Letter No. 91-447 as follows:

Some of the information submitted relates to inactive investigations. Where it is apparent from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers, the names and statements of witnesses and law enforcement officers, the names and statements of witnesses may be withheld under section 3(a)(8). Open Records Decision No. 252 (1980); *see also* Open Records Decision No. 397 (1983). Given the facts of this particular case, we believe that retaliation and harassment against the witnesses might result if the requested information is released. Furthermore, because the underlying dispute is long-standing, has not yet been resolved,

and relates to pending prosecutions and investigations, we believe that the release of the requested information might adversely affect future cooperation between the witnesses and law enforcement agencies. Accordingly, you may withhold the information from disclosure under section 3(a)(8). You may not withhold, however, any information relating to inactive investigations which would reveal only the identity or only the statements of the requestor or any members of her family. You have not shown that such information would subject witnesses to intimidation or interfere with law enforcement, and it must be released. In addition, first page offense report information, held open in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ denied*, *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) and Open Records Decision No. 127 (1976), must be disclosed where such information does not reveal the identity of juveniles or unarrested suspects.

In Open Records Letter No. 92-57 we ruled:

Exhibit B contains reports that name "non-arrested suspects."...

To withhold information under section 3(a)(8), a governmental body must show that release would undermine a legitimate interest of law enforcement or prosecution and a case-by-case approach is necessary. Open Records Decision No. 434 (1986), citing *Ex Parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not demonstrated that release of the requested information would undermine a legitimate interest of law enforcement or prosecution. Accordingly, the names of non-arrested suspects may not be withheld under section 3(a)(8). Exhibit B must be released in its entirety.

We do not believe that these rulings conflict. This office addresses governmental bodies' claims under section 3(a)(8) that the release of information would undermine legitimate interests of law enforcement on a case-by-case basis. Open Records Decision No. 434 (1986). In Open Records Letter No. 91-447, which involved a number of interrelated incidents pertinent to both active and inactive

files, this office concluded that the city had adequately demonstrated that release of the names of "non-arrested suspects" would undermine legitimate interests of law enforcement. Specifically, it was apparent from the documents that the release of this information relating to inactive files could cause retaliation against witnesses and affect future cooperation of witnesses with law enforcement, particularly because the information in the inactive files related to pending prosecutions and investigations. Clearly, Open Records Letter No. 91-447 does *not* stand for the proposition that the names of "non-arrested suspects" are excepted under section 3(a)(8) in every case.

In Open Records Letter No. 92-57, we concluded that the city had not demonstrated that the release of the names of "non-arrested suspects" would undermine a legitimate law enforcement interest. In that case, there was no indication that the release of the names of the "non-arrested suspects," the subjects of complaints regarding alleged pushing and shoving outside an abortion clinic, would lead to retaliation against the complainants. Indeed, it is evident from the documents that the subjects are already aware of the fact that complaints have been filed and of the complainants' identities. Nor is there any indication that release of the names would impair future cooperation between witnesses and law enforcement.

In sum, there is no categorical rule regarding the availability of the names of "non-arrested suspects" in inactive investigations under section 3(a)(8). This office must look at the facts presented by each case. We have reviewed the brief submitted by the city in support of its request for reconsideration. Nothing in that submission alters our conclusion that the city has not demonstrated that the release of the names of the "non-arrested suspects" at issue in Open Records Letter No. 92-57 would undermine a legitimate law enforcement interest. Accordingly, the city's request for reconsideration is denied.

If you have questions about this ruling, please refer to OR92-124.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/nhb

Ref.: ID# 15017

cc: Mr. Peter Bright
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